



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/155291

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on May 01, 2014, at Racine, Wisconsin.

The issue for determination is whether Wisconsin Iris correctly terminated Petitioner's internet service.

NOTE: The record was held open to give Mrs. [REDACTED] an opportunity to submit a copy of their internet bill. It has been marked as Exhibit 3 and entered into the record. The record was also held open to give Wisconsin IRIS an opportunity to submit a copy of the Petitioner's Individual Support and Service Plan. It has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

By [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sue Henkes, Quality Service Manager
IRIS Consultant Agency
1 South Pickney Street, Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On January 27, 2014, Wisconsin IRIS (the agency) sent the Petitioner a Notice of Negative Action, indicating that effective February 15, 2014, it was terminating funding in the amount of \$30.00 per month for internet service, because it would not increase her independence or serve as a substitute for paid human assistance and because it is not a cost-effective means of meeting her desired outcomes. (Exhibit 1)
3. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on February 5, 2014. (Exhibit 1)
4. Petitioner has eight stated goals/desired outcomes in her Individual Support and Service Plan dated January 22, 2014:
 1. I want to keep in touch with my friends and family. I want to feel safe when I am attending events alone, when I am travelling between events and when I am home alone, in particular
 2. I would like to become more independent and be able to drive myself to and from activities without my parents. I like getting out of the house to participate in the variety of activities I am.
 3. I enjoy getting out of the house to socialize and bond with other individuals with disability who share my same interests.
 4. I like to maintain the best possible appearance.
 5. I would like to continue to have the best vision possible.
 6. I would like to give my parents a break from their almost full-time care giving and attend respite services.
 7. I would like to have a guide/assistant dog to gain independence.
 8. I want to improve or maintain my balance, strength and mobility. I want to stay as healthy as possible so that I can continue to enjoy the activities I am involved.

(Exhibit 4)
5. The total cost of the internet services is currently \$78.78 per month. (Exhibit 3)

DISCUSSION

The petitioner receives medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

The IRIS program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

42 CFR §441.482 describes permissible purchases in self-directed programs, such as IRIS:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

In furtherance of implementing these laws, the IRIS program has developed policies regarding funding of goods and services. *See Policy: SC 16.1, IRIS Funding for Goods, Supports and Services (Exhibit 2, pg. 20)*. That policy requires each service, support or good to meet four criteria:

- a. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her Individual Service and Support Plan;
- b. The service, support or good is documented on the Individual Service and Support Plan;
- c. The service, support or good is not prohibited by Federal and State statutes and regulations, including the State's Procurement Code;

- d. The service, support or good is not available through another source or is not experimental in nature.

In addition to meeting each of those four criteria, each service, support or good must meet at least one of the following:

- a. The service, support or good will maintain or increase the participant's safety in the home or community environment;
- b. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services;
- c. The service, support or good will maintain or increase the participant's functioning related to the disability;
- d. The service, support or good will maintain or increase the participant's access to or presence in the community.

IRIS policy, SC 16.1

In the case at hand, the Petitioner is contesting termination of funding for her share (1/3) of the cost of internet service that she and her family use.

In its Notice of Negative Action, Wisconsin IRIS stated that coverage of internet service was not permissible under 42 CFR §441.482, because it did not increase the Petitioner's independence or substitute for paid human assistance and because it would be more cost effective for the Petitioner to go to the library, where she can access the internet for free.

In its legal statement, Wisconsin IRIS stated that the cost of Petitioner's internet service could not be covered because the internet service primarily benefitted Petitioner's family, not her.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a denial for services from IRIS, the agency has the initial burden to show that it acted correctly.

Primary Beneficiary of Internet Service

IRIS policy, SC 16.1 describes goods, support and services not covered by IRIS, including:

- Goods, supports and services that are not directly related to participant goals or needs, or those that **primarily** benefit someone else.

Emphasis added

It is IRIS's position that it cannot fund the Petitioner's share of the internet service, because the internet service primarily benefits her parents. However, IRIS did not put forth any documentation showing that the internet service is used primarily by Petitioner's parents.

While it is undisputed that Petitioner's parents also use the internet service, that does not mean that they are the primary/most frequent users of the internet. Indeed, it is undisputed that the Petitioner does, in fact, use the internet service on a regular basis to socialize with, network with and receive support from other disabled individuals through a specific Facebook page. It is also undisputed that the Petitioner uses the internet to communicate with her family, some of whom are in Europe.

Because Wisconsin IRIS did not establish that the internet service is, in fact, used primarily by Petitioner's parents, it does not have a basis under the aforementioned section of SC 16.1 to deny coverage.

Is the Internet Service a Permissible Purchas Under Federal Regulations?

42 CFR §441.482 describes permissible purchases in self-directed programs:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

It is clear that the requested internet service meets the criteria under paragraph (b), because it is linked to Petitioner's goals, as stated in the Individualized Service Plan, since Petitioner's first goal is to keep in touch with family and friends. However, the requested internet service does not meet the criteria under paragraph (a). There is no evidence in the record to support the conclusion that having internet access is increasing the Petitioner's independence. In addition, there is no evidence in the record that the internet service provides assistance to the Petitioner that would otherwise be provided by a paid caregiver. Consequently, Wisconsin IRIS correctly terminated funding for Petitioner's internet service.

CONCLUSIONS OF LAW

Wisconsin IRIS correctly terminated coverage of internet service.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of June, 2014.

\s\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 16, 2014.

Bureau of Long-Term Support



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 16, 2014.

Bureau of Long-Term Support